IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ARCHER-DANIELS-MIDLAND COMPANYd/b/a ADM GRAIN COMPANY,	§ § §	C.A. NO. ___________
Plaintiff,	§	Admiralty – Rule 9(h)
	§	
versus	§	
	§	
M/V AZUR, her engines, boilers, tackle, appurtenances, etc., *in rem*,	§ §	
Defendant.		

COMPLAINT

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS:

The Complaint of Archer-Daniels-Midland Company d/b/a ADM Grain Company (hereinafter "ADM") against M/V AZUR, her engines, boilers, tackle, and appurtenances, etc., *in rem*, in a cause of action civil and maritime, pursuant to Rule 9(h), for the recovery of necessaries pursuant to the Federal Maritime Lien Act, 46 U.S.C. 31342, with respect, represents:

1.

At all times pertinent hereto, plaintiff, ADM is a corporation duly organized, created, and existing pursuant to the laws of the state of Delaware with its principal place of business in the state of Illinois.

2.

At all pertinent times hereto, the M/V AZUR (hereinafter the "Vessel") was a bulk carrier built in Japan, IMO #9314648, MMSI #538002853, with a length of approximately 225 meters, a breadth of approximately 32.2 meters, and a deadweight of approximately 76,500 tons. The vessel is flying the flag of the Marshall Islands and presently in the jurisdiction of the Southern District of Texas.

3.

This is a claim, *in rem*, under the maritime jurisdiction of the United States and this Honorable Court in accordance with 28 U.S.C. § 1333, Rule 9(h) of the Federal Rules of Civil Procedure, and Rule C of the Supplemental Rules for Certain Admiralty & Maritime Claims.

4.

ADM is the owner/operator of a grain elevator and ship mooring berth at the Port of Galveston, which loads bulk carriers for ocean transport and provides wharfage for loading.

5.

On November, 21, 2016 at 1050 hours, the Vessel issued a Notice of Readiness, concerning its availability to proceed to ADM's loading berth. At the same time, the Vessel also submitted its Application for Berth Ocean Vessels (hereinafter "Application for Berth"), which was executed by the Master of the

Vessel bearing the ship's seal. The Application for Berth contained language incorporating ADM's Elevator Tariff No. 2 (hereinafter "ADM's Tariff").

6.

In relevant part, ADM's Tariff provides the following:

> The signed Application for Berth, when received by the elevator, and/or the berthing of the vessel, shall constitute a contract between ADM GRAIN CO., and users, the vessel, its owners, and operators to abide by the provisions, rates, charges, rules and regulations set out in this Tariff. …. Users, the vessel, its owners, and operators agree to be jointly and severally liable for charges of whatsoever nature for any liabilities arising from this Tariff.
> …
>
> Vessels filing an Application for Berth at the ADM Grain Co. elevators in either Galveston or Corpus Christi will be required to remain within the commercial limits of the respective port, i.e. Galveston or Corpus Christi, Texas…
>
> *If any vessel fails to arrive within 2 hours of being ordered to a berth, due to circumstances or conditions within the control or due to the fault of the vessel, its owner(s), operator(s), charterer(s), agent(s), or employee(s), the vessel, its owner(s), operator(s), charterer(s), and/or agent(s) shall be jointly and severally liable for a dead berth charge of $5,000 for each hour or fraction thereof until the vessel is moored in berth, regardless of intervening circumstances of any nature. Such charge shall be assessed as liquidated damages.*
> (emphasis added).

7.

On November 25, 2016 on or before 0200 hours, the Vessel was anchored at the Galveston Fairway Anchorage when it developed main engine trouble. The ship was ordered to the loading berth at the grain elevator of ADM at 0500 hours. However, the Vessel was unable to shift due to engine issues at the time.

8.

As repairs were being made to the Vessel, the United States Coast Guard (hereinafter "Coast Guard") issued a Captain of the Port Order pursuant to its authority to regulate maritime safety prohibiting the Vessel from moving to the berth until the Coast Guard received and approved documentation from the classification society attesting to the cause of the malfunction of its engine, full functionality of its engine, and affirmation that the engine machinery remains in class.

9.

There was a 22 hour delay in the Vessel's arrival at the berth beyond the time the Vessel should have been ready to load under ADM's Tariff.

10.

The agreed dead berth charge is $5,000/hour, which for 22 hours is $110,000.

11.

ADM presented an invoice in the amount of $110,000 for dead berth charges to the Vessel. The charges have not been paid.

12.

Pursuant to ADM's Tariff and the events described above, Defendant Vessel is obligated to pay the dead berth charge in the amount of $110,000, together with court costs and expenses incurred by ADM. Moreover, ADM has a maritime lien as the damages claimed herein arise from ADM's provision of "necessaries" to the Vessel (i.e., wharfage/berthing services) pursuant to the Federal Maritime Lien Act, 46 U.S.C. § 31342 *et seq.*

13.

ADM has a maritime lien against the Vessel for the full amount of its claim, and is entitled to have the Vessel seized and sold, and further to have the charges paid in preference and priority to other claims.

WHEREFORE, ADM prays that:

1. A copy of the Complaint be served upon the Vessel, *in rem*;

2. All persons claiming any right, title, or interest in the Vessel her engines, boilers, tackle, appurtenances, etc., be summoned to appear, file their claim, as owner, and to answer under oath all and singular the matters aforesaid, and that after due proceedings, said Vessel be

condemned and sold to pay the demands aforesaid, with interests costs, and disbursements;

3. That the court recognize a maritime lien for necessaries against the Defendant, *in rem*, in favor of ADM in the amount of $110,000;

4. That a Warrant of Arrest be issued calling for the Vessel to be seized to satisfy the Plaintiff's claim; and

5. That Judgment be entered in favor of ADM against the Vessel, *in rem*, in the amount of $110,000, together with all other amounts shown at trial, and that this Judgment be recognized as a priority claim based upon the Federal Maritime Lien Act so that it is paid in preference and priority to all other claims of liens include any ship mortgage(s).

Respectfully submitted,

SALLEY, HITE, MERCER & RESOR, LLC

/s/ David M. Flotte
DAVID M. FLOTTE
(TX Bar# 00792249)
365 Canal Street, Suite 1710
New Orleans, LA 70130
Tel.: (504) 566-8800
Fax: (504) 566-8828
E-mail:dflotte@shmrlaw.com

Attorney for Plaintiff,
Archer-Daniels-Midland Company

Service Instructions:
Please withhold *in rem* service

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FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ARCHER-DANIELS-MIDLAND COMPANYd/b/a ADM GRAIN COMPANY, *Plaintiff*,	§ § § § §	C.A. NO. ___________ Admiralty – Rule 9(h)
versus	§ §	
M/V AZUR, her engines, boilers, tackle, appurtenances, etc., *in rem*, *Defendant*.	§ §	

VERIFICATION

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally came and appeared David M. Flotte, who, after being duly sworn, did say,

> I am an attorney representing Plaintiff in this matter and that the information set forth in this Complaint is true and correct based upon information provided by my clients and documentation supplied to me.

____
David M. Flotte

Sworn to and subscribed
This 6 day of December,
2016

____
Notary Public

MARCELLE P. MOULEDOUX
NOTARY PUBLIC
LA BAR No. 30339
Parish of Orleans, State of Louisiana
My Commission is issued for Life